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Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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Report on the meeting of the Working Group on the Smuggling of Migrants held in Vienna on 4 and 5 July 2018

I. Introduction

1. Pursuant to resolution 5/3, adopted by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime at its fifth session, an open-ended intergovernmental interim working group on the smuggling of migrants was established to advise and assist the Conference in the implementation of its mandate with regard to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. The first meeting of the Working Group was held from 30 May to 1 June 2012, the second from 11 to 13 November 2013, the third from 18 to 20 November 2015 and the fourth from 11 to 13 September 2017.

2. In its resolution 7/1, entitled "Strengthening the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto", the Conference decided, inter alia, that the Working Group would be a constant element of the Conference of the Parties, forwarding its reports and recommendations to the Conference, and encouraged the Working Group to consider meeting on an annual basis, as needed, and to hold its meetings consecutively, in order to ensure the effective use of resources.

3. In its resolution 8/2, the Conference decided to continue the process of establishing the mechanism for the review of the implementation of the Convention and the Protocols thereto based on the recommendations contained in the report on the meeting to explore all options regarding an appropriate and effective review mechanism for the United Nations Convention against Transnational Organized Crime and the Protocols thereto, held in Vienna on 6 and 7 June 2016 (CTOC/COP/WG.8/2016/2). In the same resolution, the Conference also decided to elaborate specific procedures and rules for the functioning of the review mechanism for consideration and adoption by the Conference at its ninth session, which was to be guided by the principles and characteristics set out in Conference resolution 5/5.

4. In resolution 8/2, the Conference further decided that the review mechanism would progressively address all the articles of the Convention and the Protocols thereto for each of the instruments that States parties were parties to, grouped in thematic clusters in accordance with the content of their provisions and that, in order to review each thematic cluster of articles, the relevant working group would, in the following two years, with the assistance of the Secretariat, define a short, precise and focused self-assessment questionnaire.

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5. Also in resolution 8/2, the Conference requested all States parties to submit responses to the existing questionnaires on the implementation of the Convention and the Protocols thereto.

II. Recommendations

6. At its meeting held in Vienna on 4 and 5 July 2018, the Working Group on the Smuggling of Migrants adopted the recommendations presented below for consideration by the Conference.

A. Recommendations on criminal justice responses, including international cooperation, in investigations and prosecutions of perpetrators of migrant smuggling operations

7. States parties should:

(a) Facilitate, where possible, capacity-building assistance directed at training competent law enforcement and criminal justice authorities in combating smuggling of migrants;

(b) Identify focal points at the national level, preferably within specialized competent services, for addressing the smuggling of migrants, and facilitate regular exchanges of best practice between those focal points;

(c) Take measures to build trust with smuggled migrants, with the aim of facilitating cooperation with law enforcement officials;

(d) Take measures, consistent with their obligations under the Protocol, to ensure a comprehensive criminal justice response regarding the smuggling of migrants addressing appropriate measures to prosecute the smugglers, together with measures to protect smuggled migrants, especially children and adolescents who have been the object of the conduct set forth in article 6 of the Protocol.

8. States parties should consider:

(a) Promoting effective international cooperation, including mutual legal assistance, and the exchange of information, between countries of origin, transit and destination, on smuggling of migrants cases, including through and in accordance with the Organized Crime Convention;

(b) Responding to the transnational criminal networks involved in migrant smuggling cases through cooperation and information-sharing between law enforcement authorities in source, transit, and destination countries, and provide training to enable these types of transnational investigations, consistent with the goals of the Organized Crime Convention and the Smuggling of Migrants Protocol;

(c) Ensuring mutual legal assistance at the regional level between judicial authorities, as appropriate, including through existing networks and mechanisms;

(d) Where appropriate and in accordance with domestic legislation, seconding representatives of competent authorities, including liaison magistrates and other experts, between countries along the same smuggling route, with the aim of facilitating contact and sharing information on criminal networks involved in the smuggling of migrants, and following up on requests for mutual legal assistance;

(e) Promoting effective communication with consular officers, as appropriate and in accordance with the Protocol and the Vienna Convention on Consular Relations, to facilitate assistance to smuggled migrants;

(f) Establishing regional and bilateral cooperation agreements, as appropriate, to facilitate assistance to smuggled migrants of countries that do not have diplomatic representation in the territory where the person object of this crime is located;

(g) Providing the Conference of the Parties with information related to emerging forms, challenges and international cooperation tools in smuggling of migrants cases, including data on the implementation of the Smuggling of Migrants Protocol or the Organized Crime Convention to combat the smuggling of migrants;

(h) Strengthening where necessary capacity-building and training efforts, including of immigration and border management officials, as well as information-sharing between border management authorities in origin, transit and destination countries, as a key component of any effective strategy to tackle the crime of the smuggling of migrants;

(i) Providing technical assistance to countries along migrant smuggling routes in accordance with article 14, paragraph 3, of the Protocol;

(j) Providing bilateral, regional and international training opportunities to enhance the capacities of national competent authorities to prevent and counter migrant smuggling, including through the use of mock investigations and trials;

(k) Reviewing domestic procedures and practices related to international cooperation to enhance mutual legal assistance in investigations, cross-border collaboration, prosecutions and judicial proceedings where appropriate, related to the smuggling of migrants, and facilitate consultation in the context of extradition requests in accordance with applicable international and domestic law.

B. General recommendations

9. States parties should address the underlying causes of the smuggling of migrants in a comprehensive, coordinated and direct manner at the national, bilateral, regional and international levels, taking into account the socioeconomic realities of migration and paying special attention to economically and socially depressed areas.

10. States parties should consider:

(a) Protecting and ensuring the rights and dignity of smuggled migrants while combating smuggling of migrants, giving particular attention to women and children;

(b) Establishing or enhancing appropriate channels and laws for regular and orderly migration, as a way to reduce the danger posed by smuggling organizations;

(c) Ensuring the full implementation of article 5 and article 6, paragraph 4, of the Protocol;

(d) Providing support to enable the United Nations Office on Drugs and Crime (UNODC) to increase its efforts to counter smuggling of migrants, in particular technical assistance to build related competent authorities' capacities and knowledge;

(e) Contributing to the extent possible to the UNODC Case Law Database on the Smuggling of Migrants.

11. The Working Group recommended that the Conference of the Parties consider adopting the questionnaire on the smuggling of migrants as approved by the Working Group.

III. Summary of deliberations

12. At the beginning of the meeting of the Working Group on 4 July 2018, general statements were made by the representatives of El Salvador, Uruguay and the European Union. All three speakers stressed the importance of upholding the human rights of migrants, including the need to refrain from criminalizing migrants.

13. The representative of Uruguay stressed that it was in the interest of States to address the underlying causes of the smuggling of migrants in a coordinated and direct way and to encourage broad social and economic policies for education, crime

prevention, health and justice, in order to avoid situations that gave rise to the smuggling of migrants. The speaker stressed the importance of international cooperation at the official and informal levels. While recognizing the right of States to develop and implement policies governing migratory flows within their territory, the speaker called for States to avoid violations of human rights of migrants and their families, especially those of vulnerable persons and children. The speaker emphasized that refusing to allow boats containing migrants to dock and incarcerating children in jails, separate from their parents, were morally inexcusable violations of the most elemental ethical rules.

14. The representative of the European Union, speaking on behalf of the European Union and its member States, stressed the role of criminal networks in placing migrants in dangerous situations, violating their fundamental rights and even causing death. Despite efforts to disrupt migrant smuggling criminality and protect migrants, smuggling to and through the European Union continued to be a reality, necessitating the reinforcement of transnational cooperation, including cooperation at the level of the European Union, with strategic partners, international organizations and civil society. It was noted that the Smuggling of Migrants Protocol continued to have a key role to play, as did UNODC as one of the European Union's primary partners in this field.

15. The representative of El Salvador highlighted the importance of international cooperation in enabling origin, transit and destination countries to dismantle smuggling networks and ensure the protection of the human rights of all migrants and families. El Salvador condemned policies and regulations that promoted arbitrary detention of migrant children and separated them from their families, and called for criminal justice responses to be comprehensive and take into account the rights of migrants and their families. The speaker noted that there were State obligations in that respect that existed outside of the Smuggling of Migrants Protocol. The speaker also called on States parties to support negotiations on the Global Compact on Safe, Orderly and Regular Migration as an excellent opportunity to address the challenges of migration as well as its contribution to sustainable development.

16. Under agenda item 2, the Working Group resumed discussions on the draft questionnaire by returning to specific questions on which there were outstanding concerns, following the two readings of the document at the previous meeting of the Working Group.

17. In the discussion on the item, a number of speakers stressed the need to ensure the questionnaire's consistency with the language of the Smuggling of Migrants Protocol, calling for questions that went beyond the scope of the Protocol not to be included in the questionnaire. One speaker suggested making a recommendation to the Conference of the Parties for guidance on how to deal with questions that went beyond the scope of the instrument.

18. A number of speakers expressed a desire to avoid duplication between the questionnaire on the smuggling of migrants and the questionnaire dealing with the Organized Crime Convention, reiterating that several questions would be better placed in the questionnaire related to the Organized Crime Convention.

19. On the basis of comments made during the third reading of the text, the Chair developed a revised version of the non-paper containing the draft questionnaire.

20. The Working Group then considered item 3 on the agenda, entitled "Criminal justice responses, including international cooperation, in investigations and prosecutions of perpetrators of migrant smuggling operations".

21. The discussion under agenda item 3 was facilitated by Mr. Kamel Samir, Chief of the Office for International Cooperation at the Office of the Prosecutor General of Egypt, on behalf of the Group of African States; Mr. Enrique Octavio Baeza Pulido, Official of the Federal Public Prosecutor's Office, Specialized Unit for Investigation of Trafficking in Minors, Persons and Organs at the Special Attorney's Office for Organized Crime Investigation, Attorney-General's Office of Mexico, on behalf of

the Group of Latin American and Caribbean States; and Mr. Pravit Roykaew, Senior Expert Public Prosecutor of Thailand, on behalf of the Group of Asia-Pacific States.

22. Mr. Samir delivered a presentation regarding Egypt's experience in investigating and prosecuting perpetrators of migrant smuggling. The panellist outlined the applicability of the Constitution of Egypt of 2014 and Law 82 of 2016 on combating illegal migration and smuggling of migrants to Egypt's response to smuggling of migrants that went beyond the Protocol in the criminalization of acts of smuggling and the rights given to victims. He noted that the Egyptian National Coordination Committee for Preventing and Combating Illegal Migration, as a group of 26 national stakeholders, worked to address national and international coordination between policies, plans and programmes to prevent and combat illegal migration and protect smuggled migrants and witnesses, including their rights to legal aid, privacy, confidentiality and psychological assistance. The panellist also outlined the good cooperation between the Public Prosecution Office of Egypt and UNODC, providing examples of national, regional and international initiatives to counter smuggling of migrants, mentioning in particular the African experience. The panellist noted that the Prosecutor General of Egypt was acting as Vice-President of the African Prosecutors Association.

23. Mr. Baeza Pulido delivered a presentation on Mexico's experience with the smuggling of migrants, outlining the primary routes and nationalities of those detected. The panellist highlighted the often deplorable conditions in which migrants were smuggled. He also noted the recent use of ride-hailing services, whose drivers were often unaware that they were assisting organized criminal networks. The panellist noted that in Mexico, smuggled migrants were no longer treated as criminals but as victims entitled to a range of human rights protections. While those migrants could be compelled to make a statement in court, a number of protection measures were implemented where that occurred. The panellist highlighted the good cooperation with the Ibero-American Association of Public Prosecutors, as well as with UNODC through the national training programme on preventing and combating migrant smuggling in Mexico (SOMMEX), which provided a range of tailored assistance in preventing and combating the smuggling of migrants.

24. Mr. Roykaew described the experience in Thailand. He explained the areas of overlap between the smuggling of migrants and trafficking in persons. While the limited availability of data in Thailand made it difficult to determine the real magnitude of the problem, UNODC figures indicated that of some 660,000 irregular migrants entering Thailand per year, an estimated 80 per cent relied on the services of smugglers. He noted the considerable demand for low-skilled migrant workers in sectors such as fishing, agriculture and domestic work, and the lack of economic opportunities in the countries of origin. Current challenges that Thailand faced included the low risk of detection at some official border checkpoints, difficulties in obtaining information from smuggled migrants and the limited use of mutual legal assistance channels within the region of the Association of Southeast Asian Nations. The speaker noted that at present, Thailand did not have a specific law dealing with the smuggling of migrants, meaning that smuggled migrants were addressed under immigration legislation and generally deported once detected. However, a new draft law would provide an improved scope for addressing migrant smuggling and should enable Thailand to ratify the Smuggling of Migrants Protocol by the end of 2018.

25. During the question-and-answer session following the panellists' presentations, several States parties highlighted the considerable areas of overlap between the smuggling of migrants and trafficking in persons that existed on the ground, and the need for investigators and prosecutors to have sufficient knowledge and expertise to respond accordingly.

26. Several States parties emphasized the importance of addressing root causes contributing to smuggling of migrants and taking preventative measures, including awareness-raising activities, while also enhancing legal migration channels.

27. States parties exchanged views on approaches taken to mutual legal assistance and extradition requests relating to smuggling of migrants. Several noted a good level of coordination with other countries, including through informal communication prior to formal submission of requests, as well as prior to final decisions thereon. The need to be able to readily identify authorities responsible for sharing such information was highlighted.

28. A number of States parties took the opportunity to deliver national statements. In doing so, many States parties stressed the importance of the Global Compact on Safe, Orderly and Regular Migration, which they hoped would provide practical tools to protect the rights of smuggled migrants, regardless of their migratory status.

29. Many speakers, while recognizing the sovereign right of States parties to implement policies governing migration, stressed the importance of the non-criminalization of smuggled migrants and the need for broad human rights protection. Several States parties expressed serious concerns regarding restrictive border policies and the detention of children, in particular when separated from their families. Several speakers also noted that implementing security measures without addressing the socioeconomic causes of migration yielded limited success.

30. Many States parties stressed that international cooperation was the best means of tackling smuggling of migrants in a comprehensive and integrated manner. Strengthening regional approaches was identified as a key aspect of such cooperation.

31. A number of States parties noted the importance of the role of UNODC in facilitating technical assistance in promoting ratification and implementation of the Smuggling of Migrants Protocol, with one speaker urging other States parties to increase support provided to the efforts of UNODC to counter the smuggling of migrants. The value of UNODC tools, including the Smuggling of Migrants Knowledge Portal, was also highlighted.

32. The Working Group finalized the consideration of the questionnaire. In doing so, the Working Group underlined that references to the applicability of special investigative techniques and asset recovery tools to migrant smuggling offences should be included in the questionnaire relating to the Organized Crime Convention.

33. The Chair, upon approval of the questionnaire by the Working Group, noted that the adopted questionnaire would be attached as an annex to the report of the meeting.

IV. Organization of the meeting

A. Opening of the meeting

34. The Working Group on the Smuggling of Migrants met in Vienna on 4 and 5 July 2018. Four meetings were held.

35. The meeting was opened by Francesco Testa (Italy), Chair of the Working Group. He addressed the meeting and presented an overview of the mandate of the Working Group, its objectives and the subjects under its consideration.

36. At the opening of the meeting, a statement was made by the representatives of El Salvador, the European Union (on behalf of the States members of the European Union) and Uruguay.

B. Statements

37. General introductory statements were made by a representative of the Secretariat under agenda items 2 and 3.

38. With the Chair presiding, the discussion under agenda item 3, entitled "Criminal justice responses, including international cooperation, in investigations and prosecutions of perpetrators of migrant smuggling operations", was led by the

following panellists: Kamel Samir (Egypt), Enrique Octavio Baeza Pulido (Mexico) and Pravit Roykaew (Thailand).

39. Under agenda items 2 and 3, statements were made by representatives of the following parties to the Smuggling of Migrants Protocol: Algeria, Brazil, Canada, Cuba, Dominican Republic, Egypt, Fiji, Germany, India, Italy, Japan, Mexico, Namibia, Nigeria, Paraguay, Spain, Turkey, United States of America, Uruguay and Venezuela (Bolivarian Republic of).

40. The observers for Iran (Islamic Republic of), Morocco and the Sudan also made statements.

C. Adoption of the agenda and organization of work

41. At its 1st meeting, on 4 July 2018, the Working Group adopted by consensus the following agenda, as orally amended:

1. Organizational matters:
   (a) Opening of the meeting;
   (b) Adoption of the agenda and organization of work.
2. Preparation of the questionnaire to review the implementation of the Smuggling of Migrants Protocol.
3. Criminal justice responses, including international cooperation, in investigations and prosecutions of perpetrators of migrant smuggling operations.
4. Other matters.
5. Adoption of the report.

D. Attendance

42. The following parties to the Smuggling of Migrants Protocol were represented at the meeting: Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Bahrain, Belgium, Brazil, Canada, Chile, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, European Union, Fiji, France, Gambia, Germany, Greece, India, Iraq, Italy, Japan, Kazakhstan, Kuwait, Lebanon, Libya, Luxembourg, Malta, Mexico, Myanmar, Namibia, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Switzerland, Syrian Arab Republic, Tajikistan, Turkey, United Kingdom of Great Britain and Northern Ireland, United States, Uruguay and Venezuela (Bolivarian Republic of).

43. The following States signatories to the Smuggling of Migrants Protocol were represented by observers: Bolivia (Plurinational State of), Sri Lanka and Thailand.

44. The following States that are not parties or signatories to the Smuggling of Migrants Protocol were represented by observers: Iran (Islamic Republic of), Israel, Malaysia, Morocco, Nepal, Pakistan, Singapore, Sudan, United Arab Emirates and Yemen.

45. The Office of the United Nations High Commissioner for Refugees was represented by an observer.

46. The Sovereign Military Order of Malta, an entity maintaining a permanent Observer Office, was represented by an observer.

47. The following intergovernmental organizations were represented by observers: Commonwealth of Independent States, Food and Agriculture Organization of the

United Nations, Gulf Cooperation Council, International Criminal Police Organization (INTERPOL) and Parliamentary Assembly of the Mediterranean.

48. A list of participants is contained in document CTOC/COP/WG.7/2018/INF/1/Rev.1.

E. Documentation

49. The Working Group had before it the following:

(a) Annotated provisional agenda (CTOC/COP/WG.7/2018/1);

(b) Background paper prepared by the Secretariat on criminal justice responses, including international cooperation, in investigations and prosecutions of perpetrators of migrant smuggling operations (CTOC/COP/WG.7/2018/2);

(c) Non-paper containing a draft questionnaire for the review of the implementation of the Smuggling of Migrants Protocol, in accordance with Conference resolution 8/2 (CTOC/COP/WG.7/2018/CRP.1).

V. Adoption of the report

50. On 5 July 2018, the Working Group adopted the present report on its meeting (CTOC/COP/WG.7/2018/L.1, CTOC/COP/WG.7/2018/L.1/Add.1 and CTOC/COP/WG.7/2018/L.1/Add.2).

Annex

Questionnaire for the review of the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

1. At its eighth session, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided to continue the process of establishing the mechanism for the review of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, and that such mechanism should progressively address all the articles contained in the Convention and the Protocols thereto (Conference resolution 8/2).

2. The Conference also decided that the review mechanism should be conducted within the Conference and its existing working groups, which should add the matter as an item to their agenda, consistent with their areas of expertise and without prejudice to their respective existing mandates, and that for that purpose, each relevant working group should define, in the following two years, with the assistance of the Secretariat, a short, precise and focused self-assessment questionnaire.

3. The present questionnaire was developed pursuant to this mandate, to collect information from States parties and signatories to the Protocol against the Smuggling of Migrants by Land, Sea and Air, in accordance with Conference resolution 8/2.

4. The questionnaire builds on previous information-gathering questionnaires developed by the Secretariat and adopted by the Conference at its first and second sessions and covers all relevant provisions of the Protocol. The questionnaire has also been aligned with the *International Framework for Action to Implement the Smuggling of Migrants Protocol* (2012), a key technical assistance tool developed and widely used to support United Nations Member States in the effective implementation of the Smuggling of Migrants Protocol.

5. The questionnaire is based on the following general principles:

(a) In order to avoid the need for extensive interpretation, questions contain language on concrete measures instead of generic references to the Protocol and Convention provisions;

(b) Questions aim at providing a basis for the review of the legislative transposition as well as the practical implementation of measures provided in the Protocol;

(c) Questions also relating to the mutatis mutandis application of the Convention on specific matters falling under the scope of application of the Protocol are addressed in a separate questionnaire on the implementation of the Convention;

(d) States are encouraged to submit laws, regulations, cases and other documents on the Sharing Electronic Resources and Laws on Crime (SHERLOC) knowledge management portal.

I. Definition and criminalization requirements under the Smuggling of Migrants Protocol

Foreword: Those responding to this questionnaire may submit, in lieu of the response, information that has already been provided in the context of the review of the Convention or other Protocols or another review. Please enclose the response provided with the necessary update, if any.

1. Is the smuggling of migrants criminalized under your domestic legislation (art. 6, para. 1, of the Protocol)?

☐ Yes ☐ No

If the answer is "No", please explain.

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If the answer is "Yes", is smuggling of migrants defined in your country as a criminal offence in accordance with article 3, subparagraph (a), of the Protocol?

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2. Is in particular the purpose of obtaining a "financial or other material benefit", as mentioned in the Protocol, a constituent element of the offence?

☐ Yes ☐ No

3. Can the presence of a "financial or other material benefit", as mentioned in the Protocol, when appropriate, constitute an aggravating circumstance of the crime?

☐ Yes ☐ No

Please cite the applicable law(s) and/or other measure(s), including the applicable sanctions for this offence.

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4. Does your domestic legislation make a distinction between the smuggling of migrants and trafficking in persons?

☐ Yes ☐ No

If the answer is "No", please explain.

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5. Is producing, procuring, providing or possessing a fraudulent travel or identity document (as defined in art. 3, subpara. (c), of the Protocol) for the purpose of smuggling of migrants criminalized under your domestic legislation (art. 6, para. 1 (b), of the Protocol), or as a related offence or offences?

☐ Yes ☐ No

If the answer is "Yes", please specify.

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6. Is enabling a person who is not a national of or a permanent resident in your country to remain in its territory without complying with the necessary requirements for legally remaining, by using the means referred to in question 5 above or any other illegal means, criminalized under your domestic legislation (art. 6, para. 1 (c), of the Protocol)?

☐ Yes ☐ No

Ancillary offences (article 6, paragraph 2 (a), (b) and (c) of the Protocol)

7. Does your country's legislation establish as a criminal offence the attempt to commit the offences referred to in questions 1, 5 and 6 above (art. 6, para. 2 (a), of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please cite the applicable law(s) and/or other measure(s), including the applicable sanctions.

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8. Is participating as an accomplice in the offences referred to in questions 1, 5 and 6 above criminalized under your domestic legislation (art. 6, para. 2 (b), of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please cite the applicable law(s) and/or other measure(s), including the applicable sanctions.

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9. Are organizing or directing other persons to commit the offences referred to in questions 1, 5 and 6 above criminalized under your domestic legislation (art. 6, para. 2 (c), of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please cite the applicable law(s) and/or other measure(s), including the applicable sanctions.

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10. Does your country adopt such legislative and other measures as might be necessary to establish as aggravating circumstances to any of the offences referred to in questions 1, 4, 6, 8 and 9 above, conduct that endangers, or is likely to endanger,

the lives or safety of the smuggled migrants or that subjects them to inhuman or degrading treatment, including for exploitation (art. 6, para. 3, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please cite the applicable law(s) and/or other measure(s), including the applicable sanctions, if any.

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II. Law enforcement and judicial system

Matters related to border measures, security and control of documents and legitimacy and validity of documents

11. Has your country adopted any legislative or other appropriate measures to prevent means of transport operated by commercial carriers from being used in the commission of the offence of smuggling of migrants (art. 11, para. 2, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please specify and provide any available information on whether such measures include establishing the obligation of commercial carriers to ascertain that all passengers are in possession of the travel documents required for entry into the country, as well as on any sanctions in case of violation of such obligation (art. 11, paras. 3 and 4, of the Protocol).

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12. Have your country's competent authorities strengthened border measures in order to prevent and detect the smuggling of migrants (art. 11, para. 1, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please specify.

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13. Does your country's legislation provide for any measures that permit the denial of entry or revocation of visas of persons implicated in the commission of offences related to the smuggling of migrants (art. 11, para. 5, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please specify.

14. Has your country taken any measures to ensure the adequacy of the quality and the integrity and security of travel or identity documents issued by its competent authorities (art. 12, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please specify which measures have been adopted.

15. Do your country's competent authorities, in accordance with your domestic law, verify, at the request of another State party, within a reasonable time, the legitimacy and validity of travel or identity documents issued or purported to have been issued in your country's name and suspected of being used for the smuggling of migrants (art. 13, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please specify.

III. Protection and assistance measures for smuggled migrants

16. Has your country taken any legislative or other appropriate measures to preserve and protect the rights of smuggled migrants, in particular the right to life and the right not to be subject to torture or other cruel, inhuman or degrading treatment or punishment (art. 16, para. 1, of the Protocol)?

(a) If the answer is "No", please explain.

(b) if the answer is "Yes", please specify.

17. Has your country taken any appropriate measures to afford smuggled migrants protection against violence that may be inflicted upon them by individuals or groups (art. 16, para. 2, of the Protocol), by reason of being the object of conduct set forth in article 6 of the Protocol?

(a) If the answer is "No", please explain.

(b) If the answer is "Yes", please specify.

18. Has your country taken any measures to enable the provision of appropriate assistance to smuggled migrants whose lives or safety are endangered (art. 16, para. 3, of the Protocol)?

(a) If the answer is "No", please explain.

(b) If the answer is "Yes", please specify.

19. Which of the measures below are applied by your country to enable the provision of assistance to migrants smuggled by sea whose lives are in imminent danger (art. 8, para. 5, of the Protocol)?

☐ Review or amendment of legislation, strategies or national action plans to provide basic assistance to smuggled migrants.

☐ Review or amendment of legislation to ensure that the provision of humanitarian assistance to smuggled migrants is not criminalized.

☐ Allocation of resources to support the provision of basic assistance to smuggled migrants whose lives and safety are endangered, ensuring that the State covers the full cost of assistance and that the migrants do not bear it.

☐ Establishment of procedures to provide urgently required medical care, and access to health facilities, food, water and sanitation, as well as other necessary goods and services.

☐ Investigation and prosecution of allegations of failure to assist smuggled migrants whose lives and safety are endangered.

☐ Other measures (please specify):

20. In implementing protection and assistance measures for smuggled migrants, do your country's laws, regulations, national strategies and policies take into account the special needs of women and children (art. 16, para. 4, of the Protocol), with particular regard to access to education for children?

☐ Yes ☐ No

If the answer is "Yes", please specify the measures taken by your country to address the special needs of women and children who have been smuggled.

21. In the case of detention of smuggled migrants, do your country's competent authorities comply with the obligation under the Vienna Convention on Consular Relations to inform those persons without delay about the provisions of the Convention concerning notification to and communication with consular officers (art. 16, para. 5, of the Protocol)?

☐ Yes ☐ No

IV. Preventive measures

A. Capacity-building measures (article 14 of the Protocol)

22. Has your country built the capacity of border, immigration and law enforcement officials, diplomatic and consular representatives, to prevent, combat and eradicate migrant smuggling while respecting the rights of smuggled migrants as set forth in the Protocol?

☐ Yes ☐ No

If the answer is "Yes", please specify on which of the below topics the capacity-building was:

- ☐ International and domestic legal framework to combat migrant smuggling.
- ☐ Protecting and assisting smuggled migrants.
- ☐ Assisting and rescuing smuggled migrants whose lives are in imminent danger.
- ☐ Preventing migrant smuggling.
- ☐ International law enforcement cooperation (e.g. joint investigation teams, information-sharing).
- ☐ Other topics (please specify):

Please also provide details on the following types of capacity-building activities.

- ☐ Improving the security and quality of travel documents.
- ☐ Recognizing and detecting travel or identity documents which have been produced fraudulently.
- ☐ Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected to be engaged in migrant smuggling, the methods used to transport smuggled migrants and the means of concealment.
- ☐ Improving procedures for detecting smuggled migrants at conventional and non-conventional points of entry and exit.
- ☐ The humane treatment of migrants and the protection of their rights.

Please provide more details on the aforementioned types of capacity-building activities provided and their frequency.

23. Have you built the capacity of criminal justice institutions to prevent, combat and eradicate migrant smuggling while protecting the rights of the smuggled migrants?

☐ Yes ☐ No

If the answer is "Yes", please specify on which of the below topics the capacity-building was:

- ☐ International and domestic legal framework to combat migrant smuggling.
- ☐ Investigation methods and techniques in migrant smuggling cases.
- ☐ Prosecuting and sentencing of migrant smuggling cases.
- ☐ Financial investigations and prosecutions.
- ☐ Witness protection.
- ☐ The humane treatment of migrants and the protection of their rights.
- ☐ Improving judicial cooperation and mutual legal assistance.
- ☐ Other topics (please specify):

Please provide more details on the type of capacity-building activities provided and their frequency.

24. In what areas would diplomatic and consular representatives need more capacity-building?

25. Does your country cooperate, as appropriate, with international and regional organizations, civil society and other relevant stakeholders to develop and deliver training on combating migrant smuggling and protecting the rights of migrants who have been smuggled (art. 14, para. 2, of the Protocol)?

☐ Yes ☐ No

B. Other prevention measures (article 15 of the Protocol)

26. Has your country carried out awareness-raising campaigns on the dangers of migrant smuggling?

☐ Yes ☐ No

If the answer is "Yes", for which target audience was it?

- ☐ Law enforcement officials, such as police, immigration and border officials.
- ☐ Navy and military personnel.
- ☐ Magistrates.
- ☐ Parliamentarians.
- ☐ Commercial carriers.
- ☐ Media.
- ☐ Schools and universities.
- ☐ Diaspora communities.
- ☐ Civil society at large.
- ☐ Potential migrants.
- ☐ Others (please specify):

_____

_____

27. Has your country taken measures to reduce the vulnerability to migrant smuggling of communities by combating the root socioeconomic causes of the smuggling of migrants (art. 15, para. 3, of the Protocol)?

If the answer is "No", please explain.

_____

_____

If the answer is "Yes", please specify.

_____

_____

V. Information exchange, coordination and international cooperation

A. Information

28. Has your country adopted measure(s) to promote the secure and fast information exchange with other States to implement the provisions set forth in article 10 of the Protocol?

If the answer is "No", please explain.

If the answer is "Yes", please provide more details.

29. Does your country identify information to be restricted in use in the context of international cooperation procedures (art. 10, para. 2, of the Protocol)?

If the answer is "No", please explain.

If the answer is "Yes", please specify.

30. Does your country regularly collect data and analyse trends on the smuggling of migrants (art. 28, of the Convention)?

☐ Yes ☐ No

If the answer is "No", please explain.

If the answer is "Yes", please specify.

B. Coordination

31. Has your country taken any measures to strengthen cooperation with the border control agencies of other States parties, by, inter alia, establishing and maintaining direct channels of communication (art. 11, para. 6, of the Protocol)?

☐ Yes ☐ No

C. Cooperation

32. Has your country concluded bilateral or regional agreements or operational arrangements or understandings to allow the establishment of the most appropriate and effective international cooperation to prevent and combat the conducts set forth

in article 6 of the Protocol, and to enhance the provisions of the Protocol among States (art. 17, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please elaborate further on the agreements and arrangements and provide examples of their implementation, and cite also the applicable policy/policies or law(s).

33. Has your country entered into any bilateral or multilateral agreement or arrangement related to migrant smuggling including governing, in whole or in part, the return of smuggled migrants (art. 18, para. 8, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please specify.

34. With particular regard to the smuggling of migrants by sea, has your state notified the Secretary-General of the United Nations of the authority designated to receive and respond to requests for assistance (art. 8 para 6, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please include relevant information.

35. Has your country adopted specific legislative, administrative and other measures against smuggling of migrants at sea? Please also include information on operational challenges, successes and best practice (arts. 7, 8 and 9 of the Protocol).

☐ Yes ☐ No

If the answer is "Yes", please specify.

36. Does your country provide cooperation to other States according to article 8 of the Protocol (measures against the smuggling of migrants by sea)?

☐ Yes ☐ No

If the answer is "Yes", please specify.

D. Matters related to the return of smuggled migrants

37. Do your country's competent authorities facilitate and accept, without undue or unreasonable delay, the return of a smuggled migrant who is a national of, or has the right of permanent residence in your country at the time of his/her return (art. 18, para. 1, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please provide more details on the procedure.

38. Do your country's competent authorities facilitate and accept the return of a smuggled migrant who had the right of permanent residence in your country at the time of entry into the receiving State in accordance with its domestic law (art. 18, para. 2, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please provide more details on the procedure.

39. Do your competent authorities respond without undue or unreasonable delay to the request from other States to verify whether a smuggled migrant is a national of, or has the right of permanent residence in, your country (art. 18, para. 3, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please provide more details on the procedure.

40. Do your country's competent authorities issue, at the request of the receiving State party, such travel documents or other authorization as may be necessary to enable the smuggled migrant, after identification of his or her nationality, to travel and re-enter the territory of your country (art. 18, para. 4, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please provide more details on the procedure.

41. What kind of measures are taken in your country to carry out the return of smuggled migrants in an orderly manner? Please specify and provide any available information on how the need to ensure the safety and dignity of smuggled migrants is taken into account in the process of their return (art. 18, para. 5, of the Protocol).

42. Do your country's competent authorities cooperate with relevant international organizations in implementing measures to carry out the return of smuggled migrants (art. 18, para. 6, of the Protocol)?

☐ Yes ☐ No

If the answer is "Yes", please specify with which international organizations you cooperate.

VI. Difficulties encountered and assistance required

43. Please describe challenges by your country in the implementation of the Smuggling of Migrants Protocol provisions.

If domestic legislation has not been adapted to the Protocol's requirements, what steps remain to be taken? Please specify.

44. Does your country require additional measures, resources, or technical assistance to effectively implement the Protocol?

☐ Yes ☐ No

If the answer is "Yes", please indicate the type of assistance required to implement the Protocol:

- ☐ Assessment of criminal justice response to migrant smuggling.
- ☐ Legal advice/legislative drafting support.
- ☐ Model legislation/regulation(s)/agreement(s).
- ☐ Development of strategies/policies, action plans.

- ☐ Good practices/lessons learned.
- ☐ Capacity-building through the training of criminal justice practitioners and/or the training of trainers.
- ☐ Capacity-building through awareness-raising among judiciary.
- ☐ On-site assistance by a relevant expert.
- ☐ Institution-building/strengthening.
- ☐ Prevention/awareness-raising.
- ☐ Technological assistance and equipment (please be specific).
- ☐ Development of data collection/database(s).
- ☐ Workshops/platform to enhance regional and international cooperation.
- ☐ Specialized tools such as e-learning modules, manuals, guidelines and standard operating procedures.
- ☐ Other (please specify):

45. On what areas would your border, immigration and law enforcement officials in your country need more capacity-building?

46. On what areas would criminal justice institutions in your country need more capacity-building?

47. Are you already receiving technical assistance in these areas?

☐ Yes ☐ No

If the answer is "Yes", please specify the area of assistance.

Please note, if your State has any additional material that you would like to share, please provide this through the SHERLOC database.

Country: _____

Date on which the questionnaire was received:

___/___/___
(day/month/year)

The official(s) responsible for responding to the questionnaire is (are):

Ms./Mr. _____

Title and/or position: _____

_____

Agency and/or office: _____

_____

Mailing address: _____

_____

_____

_____

Telephone number: _____

Telefax number: _____

Email address: _____